

December 6, 2007

Meeting began at 7:07 p.m.

Present: Bill Muse, Mayor; Randy Ripplinger, Pete Schaus, Gladys LeFevre, Wendell Roundy, Council Members; Judi Davis, Clerk; Marvin Bagley, Attorney; Jeff Ostler, John Wolfer, Tim Clarke and Scotty Mitchell, Loch Wade, Mark Nelson, Donna Jean Wilson, Keith Gailey, Julie Ketchum, Joe Parker, Melea Smith, Cookie Schaus, Leo Gardner, Brian Dick, Alyssa Tippetts, Serena Stockmann, Ryan Haws, Ray Nelson and Denise Pennington, Peg Smith and Sergio Femenias, Ben Ripplinger, Daniel Reeder, Keith Watts, Dennis Bertucci, Caroline Gaudy, BJ Orozco, 2 visitors.

Pledge of allegiance

Gladys made a motion to approve the minutes of the meetings of November 1 and November 15 as presented. Pete seconded the motion. The vote was unanimous.

The community Christmas party will be December 19 in conjunction with the school party. Gladys won't be able to take responsibility for the town's portion of the program this year, but her daughters will help with the gifts. Randy will ask Shelly to locate a Santa. The town will provide a drink and those who come will be asked to bring cookies. Gladys will coordinate with Sue Fullmer at the school. The Library Christmas party will be this Saturday from 5:00-7:00, and they ask everyone to bring a plate of cookies. (Kelly Roundy came.)

Members of the Town Council need to look at the grounds master plan which is posted in the locked bulletin board and get their comments to Tim Clarke or Tom Jerome.

In order to meet the requirements for applying for a Block Grant, we need to adopt an anti-displacement and relocation assistance plan. The proposed plan was presented and discussed. Pete made a motion we adopt Resolution 2007-2, Resolution Adopting Anti-displacement and Relocation Assistance Plan. Gladys seconded the motion. The vote was unanimous.

The mayor announced that a letter stating our intentions on the SITLA parcel has been sent to that agency with copies going to others as outlined last month. Mark Nelson reported that he talked with Hugh Wolf from the BLM. There are trade possibilities in and out of the county, but nothing can be done until their plan is

finished. (Randy Catmull, Sam Stout, and John Austin came.) Lou Brown from the Richfield office of SITLA told Mark that they may not share the appraisal with us. It isn't finished yet. (Colleen Thompson and Walt Gove came.) They will divide the parcel into three pieces. Our process is started.

Gladys made a motion we wait until January to adopt Ordinance 57. Randy seconded the motion. The vote was unanimous.

Jack Lyman resurveyed C Street for us. It shows that the Austin gate is not on the platted C Street. Joe read a petition which he had circulated and then presented it to the Town Council. It was clarified that the actual location of platted C Street is not the same as the historic road in question, except for just a little bit where the road starts at Highway 12. BJ felt the petition was a little misleading on that point. The road to be discussed is the historically used road that begins at C Street. Loch felt that part of the confusion is the imaginary line.

The question is whether the road is private or public. We have maps from Horrocks and Jones & DeMille engineering firms showing the road. Their information came from US Geological Survey maps. Keith Gailey, former mayor, stated that the town did not abandon the road while he was mayor. When we were discussing vacating roads in 2004, he approached John to suggest he request that it be vacated. He suggested that when John improved and started using it, it reinforced the public use of it. He reviewed the court ruling on the TV tower hill road which was ruled to be public as a result of 10 years of use. This road was used for 50 years at least, as far as Keith knows.

Peg wants to know about the full length of the road. Donna responded that it went up Pretty Tree Bench and then on to Escalante. It crossed the creek. Randy Catmull asked if the lower road from the highway north is public as a result of recent court action? We don't have anything written saying one way or the other. Joe claims to have a tape of the court ordering it open. Randy C. is concerned about access because Boulder Farmstead Water Company has hydrants that need to be accessed in case of fire. The lower and upper roads weren't connected until fairly recently. The road to the highway was built in order to get gravel out in the early 1980's. Before that, access was from C Street. Loch explained his understanding of the location of the road.

Serena asked Keith whether the C Street/historical road subject came up while he was mayor. It was discussed but there was never a request or discussion on closing it.

Utah Code 72-3 presents procedures on vacating roads. The road in question is on our UDOT maps back to at least 1978. In 1990 it was identified as being on our Class C road system. Tim presented and read a letter stating his and Scotty's position. The mayor took issue with one statement in the letter and wants the record to show that previous meeting referred to on the second page of the letter ended with the Town Council vowing to follow the law and to act with dignity and integrity. The heart of the town is good, and the Town Council is not part of any vengeance. This action is not any part of private lawsuits between Mr. Ostler, Joe and Dr. Austin and confrontations with the sheriff, nor will the town be involved in any way with those actions.

Bill reiterated that the issue is a question of public access. Tim and Scotty are in favor of public access but feel it should be of pedestrian, bicycle or equestrian nature and not vehicular. Joe feels John claimed historic rights in his use of the land that he (John) doesn't think others should have. Joe read a portion of a police report, which didn't have any bearing on this issue.

Gladys asked Marvin what the town's responsibility is. What can we do and what is none of our business? There are many legal issues being considered here. A public road is created by 10 years of public use. In order to establish public use, the courts look at all kinds of evidence, such as maps, photographs, and testimony of such uses as fishing, hunting, loving, sightseeing, and access to other roads. An individual can acquire a private easement over someone else's property with 20 years of consecutive use. When determined to be public, all private rights are extinguished because there's no need for them. But, if it somehow becomes no longer a public road, private rights come back into being. The requirement is that use be 10 or 20 consecutive years at any time in the past.

The difference between vacating and abandoning was discussed. Public roads can be vacated by action of the governmental entity having jurisdiction over the road. In the past, it has always been assumed that, any time there is a vacation of a road, the private property owners on each side acquire the interest. A recent Utah Court of Appeals decision states that that rule applies in most cases, but it does not apply for town streets that were created under the Township Act and were, therefore, obtained from the Federal Government. We need to determine whether C Street, and all other platted Town streets, were created through the Townsite Act. If they were, the vacated streets return to the town as trustee for the citizens, then the town can choose to give the land to the abutting landowners if they want to, or they can sell it, with the money going to the town. The town can vacate or narrow a road. Marvin supposes the town could narrow the road in question to a trail if they chose to.

The question was asked who has standing or who can be party to a lawsuit. The town, county, any individual or group of people who have use for a road could have standing to be a part of a lawsuit. Wendell wondered if it were declared to be public, would it have to be 60 feet wide. If determined to be public by use, the historic use would determine the future use. Sam wondered if it has historically been a county road, who would have jurisdiction. It was referred to as a county road on one map, but we don't know who made that designation. If, by jurisdiction, the question is really, "Who could have it declared a public road," the county could, the town could, or individuals could. If the question is, "Who is responsible for maintaining it," the town probably is, since we are receiving C Road money for it. Bill is not sure whether the town or county has ever maintained it.

Randy Catmull is concerned about open access for Boulder Farmstead Water's meter reader. She has to climb the gate to read the meter at Steve Stoner's house. John sent a key to Barbara Gardner, so doesn't know what happened to it. He will send another. Randy's other concern is that, if the gate is locked with a fire hydrant beyond it, it becomes a safety issue for emergency vehicles. If the road is declared by a court to be public, then the gate cannot be locked.

Jeff Ostler stated that he is here to learn the truth and that he really needs to know the truth. He wondered whether anyone has noticed over the years that either of the entrances to the old Red Wing Ranch have been locked. Donna Jean and Wendell are aware that the lower gate off the highway was locked for many years. Mr. Flake gave keys to a few people who needed them. The road from the highway to the Flake house has always been there, but, until 1983-85, it didn't extend beyond the house. At that time, gravel was being extracted, and that road and the upper road were then joined.

Loch asked if 10 consecutive years of use in early times made the road public and it hasn't been vacated, is it still public? If it is determined that it is public and that the gate should be unlocked, can we require it? At this point, Marvin declared that he has worked for John, so he has a conflict of interest if we ask him what to do. We do have the right to take the lock off.

John has been in Boulder since 1960 and is familiar with the road and its history. What we need is a way for people to get up the canyon. He is happy to give anyone permission to go through the ranch and has only denied one person (Joe Parker) access. John has a restraining order against Joe. He has never had any intent to deny access. The road they now use on the ranch does not follow the historic road. The court is to decide whether the road is public or not. There is

access to the upper canyon that is not over private land. We could go to court over opening the gate, or we could follow Tim's suggestion to have a pedestrian trail. Opening the access as a road would open the same problems on ranches all over town. There are ways to compromise that would be beneficial to the town. John would be happy to sit down with Tim, Jeff, Ryan, and a representative of the town to solve the problem. He is willing to make handicap access available.

Randy Catmull restated that access to the hydrant needs to be made available for public safety. What Bill hears on the issue is access. He likes the trail system idea. The question was asked whether vehicular access would be available from the highway. John is trying to keep it fairly quiet, but he is open to anything. He wants to keep the status quo and leave the gate locked for now, but anyone could see Sean Outzen for access. Dennis asked if he would please provide a key to the Fire Department, to which John agreed.

Peg stated that the gate on the highway has been closed, but seldom locked. John said they want to know who is on their ranch. Caroline feels the willingness to compromise is good, but if it is ruled to be public, she doesn't want to have to ask permission. John replied that she wouldn't have to if it were declared so, but prefers to work out a compromise. Keith Watts would like access to the canyon, but would also like access to other historic roads. He would just like the ability to go there, not to open it to the whole world.

John has more to say if we're going to try to determine whether the road is public. Loch said there hasn't been any discussion on Jeff's right to access his property. He thinks the town has the right to declare it public because it is public. Jeff Ostler has an easement to cross the Haws property, which gives him access

Tim encouraged us to work together as a town to resolve the issue. He advised the Council to be cautious. Leo feels that, since one goal of the town is to encourage ranching, we should consider ranchers' needs before we start opening roads all over. We shouldn't make a hardship for the ranchers. He also stated that, "In 1954 I had a Buick car, and I drove down that road . . . and Otto Haws said, 'You get out of here,' so at that time he considered that a private road."

Kelly feels trails give access to people who don't know how to act around livestock. Walt thinks any agreement made among the townspeople should be acceptable to the property owners. A court decision wouldn't necessarily be acceptable to anyone. We must be respectful of property owners.

Marvin stated that John has always given permission to walk over the upper road

and to drive over the lower one. Colleen asked who the Class C Road map is from. It is provided by UDOT. Once you give something away, it is extremely difficult to reverse it. Don't give up anything then have to go to court to get it back. Ray agrees. If this is a public road, there should be public access. He doesn't agree that taking the lock off after some other negotiations is an option. He thinks the lock should be taken off so there is public access, then if the parties want to negotiate something afterwards, it could be done. It is too inconvenient to have to hunt up someone to get permission. Sam liked the suggestion that access be through the road past the ranch manager's home and suggested that a cattle guard be placed at the highway.

Gladys suggested that, in spite of all the discussion, we need more legal research on the issue and we don't have jurisdiction to decide whether it's a public road. She asked Marvin to do the research and come back to us with a recommendation. John waived the conflict so Marvin can do further research and spend time with us in executive session.

Cookie asked: if she wanted to go to the end of the Highway 12 (lower) road with a horse trailer, could she? No, she would be blocking the road. Joe suggested that anyone with questions consult with Ray Gardner who will enforce the laws fairly. Serena wondered if Marvin could give an opinion now that the conflict has been waived. He will give advice in executive session.

Peg returned to her initial question. What does the C Street track go to and how does it get there? What does it access? Her opinion is that there are personal agendas being forwarded here. Donna responded that there was never a road where the airstrip is now—it used to be a field. The road as it has been upgraded is not in the same place as the historic road. Tim thanked the Town Council for a good discussion.

The agenda was changed to have department reports before executive session. The roads are good. The Planning Commission discussion on clustering at their last meeting was well attended and informative. The Fire Department needs a key to the Austin Ranch. There were no building permits. The buildings and grounds are okay. Gladys will vote the town's water shares.

Gladys made a motion the Council adjourn to executive session to discuss litigation. Pete seconded the motion. Voting in favor by roll call vote were Wendell, Gladys, Pete, Randy, Bill. Council adjourned to executive session at 9:35 p.m.

At 10:55 p.m., Gladys made a motion open meeting resume. Randy seconded the motion. Voting in favor by roll call vote were: Wendell, Gladys, Pete, Randy, Bill.

Pete made a motion the meeting adjourn. Randy seconded the motion. The vote was unanimous.

The meeting adjourned at 10:55 p.m.

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Minutes prepared by Judith Davis  
Town Clerk

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Approved by Bill Muse  
Mayor